Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213

1. Scope. This Carahsoft Rider and the Manufacturer’s Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or “Licensee”).

2. Applicability. The terms and conditions in the attached Manufacturer’s CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft’s Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:

(a) Contracting Parties. The Government customer (Licensee) is the “Ordering Activity”, defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.


(c) Contract Formation. Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
(d) **Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity’s security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

(e) **Termination.** Clauses in the Manufacturer’s CSA referencing suspension, termination or cancellation of the Manufacturer’s CSA, the License, or the Customer’s Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

(f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer’s CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) **Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer’s CSA referencing unilateral termination rights of the Manufacturer’s CSA are hereby deemed to be deleted.

(h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer’s CSA are hereby deemed to be deleted.

(i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer’s CSA are hereby deemed to be deleted.
(j) **Customer Indemnities.** All of the Manufacturer’s CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) **Contractor Indemnities.** All of the Manufacturer’s CSA clauses that (1) violate DOJ’s right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) **Renewals.** All of the Manufacturer’s CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) **Future Fees or Penalties.** All of the Manufacturer’s CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.


(o) **Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer’s CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) **Dispute Resolution and Venue.** Any disputes relating to the Manufacturer’s CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer’s licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.
(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government’s right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).
Terms of Use

THESE TERMS OF USE (THE “TERMS OF USE”) ARE AN AGREEMENT BETWEEN YOU (AS DEFINED BELOW), AND LICENSOR (AS DEFINED BELOW). THE TERMS OF USE GOVERN YOUR USE OF THIS WEBSITE (THE “SITE”) AND THE SUBSCRIPTION SERVICES (AS DEFINED BELOW) PROVIDED BY LICENSOR.

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I. License Grant and Terms of Use.

1. Grant. Licensor grants to You a limited, non-exclusive, worldwide, nontransferable license to receive, access, and use the Subscription Service via the Internet for Your internal business purposes, subject to the terms and conditions of these Terms of Use and any written document executed by You. All rights not expressly granted to You are reserved by Licensor. Licensor grants to You a limited, non-exclusive, worldwide, nontransferable license to receive, access, use, reproduce, create derivative works from, distribute, and display said Content among Customer employees and affiliates who are bound to protect said Content as Confidential Information, provided that Customer acknowledges and informs Content recipients that all rights and license to the Content will cease upon the expiration or termination of this SSA. No other use of Content is permitted. You will maintain and will require Users to maintain Content as Confidential Information (hereinafter defined) of Licensor.

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(e) You may use the Subscription Service only for Your internal business purposes, and You shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Subscription Service or the data contained therein; or (v) attempt to gain unauthorized access to the Subscription Service or its related systems or networks.
3. Your Responsibilities. You are responsible for all activity occurring under Your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with its use of the Subscription Service, including those related to data privacy, international communications and the transmission of technical or personal data. You are responsible for maintaining the security and confidentiality of all User usernames and passwords. You shall: (a) notify Licensor immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Licensor immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by You or Your Users; and (c) not impersonate another user or provide false identity information to gain access to or use the Subscription Service.

II. Account Information and Data.

1. The Subscription Service will combine Customer Data supplied and input by Users and Content. Licensor does not own any Customer Data. You shall be solely liable for the accuracy, quality, integrity, legality, reliability, appropriateness, and Intellectual Property Rights with respect to all Customer Data.

2. Licensor will not use the Customer Data for any purpose other than to provide the Subscription Service to You and for statistical reporting purposes. Licensor may aggregate anonymous statistical data regarding use and functioning of its system by its various Users. Such aggregated statistical data will be the sole property of Licensor.

3. Subject to Licensor’s rights hereunder, Licensor shall be responsible for storage of Customer Data. You shall use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use.

III. Intellectual Property.

1. Preexisting Property. All intellectual property, including, but not limited to, know how, ideas, inventions, trade secrets, copyrights, trademarks, mask work rights, designs, source code, object code, programs, patents (including any continuation, division, renewal, substitute, or reissue thereof), patent rights, any other intellectual property rights recognized by the laws of any jurisdiction or country, whether or not registered, and whether or not reduced to practice, including all applications and registrations thereof, and improvements to the foregoing (collectively, “Intellectual Property”), owned by a party as of the date You agree to these Terms of Use (the “Preexisting Property”) will remain that party’s sole and exclusive property. Preexisting Property owned or claimed by Licensor shall be “DATUM Preexisting Property” and Preexisting Property owned or claimed by You shall be “Customer Preexisting Property.” DATUM Preexisting Property shall also include all of Licensor’s Content and proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, formats, know-how, techniques, methodologies, tools, designs and other tangible or intangible technical material or information) made available to You by DATUM in providing the Subscription Service. Customer Preexisting Property shall also include its computer programs, software, processes, and data and information about its customers, employees, business, and finances.
2. Work Product. As part of the Subscription Service, and except as expressly set forth in Section III(1), any documents, reports, programs, inventions, copyrights, trademarks, mask work rights, designs, patents, and improvements to any Customer Preexisting Property, whether or not registered, and whether or not reduced to practice, that is generated, authored, contributed or developed for You by Licensor, or by You alone, pursuant to or in connection with the Subscription Service, and all physical representations of the thereof in any form or media (collectively “Work Product”) are and will be the exclusive property of You, whether or not You take any steps to register, make an application for registration of or otherwise protect such Work Product, in whole or in part. Any copyrightable Work Product or portion thereof will be deemed a “work for hire” under Section 201(b) of the 1976 Copyright Act. Licensor agrees to and hereby does assign to You all of its rights, title and interest in any to any Work Product embodied in or represented by the Work Product. To the extent that any copyrightable Work Product or a portion thereof cannot be considered a work made for hire, Licensor agrees to and hereby does assign all of its right, title, and interest in and to the copyrightable Work Product to Customer. Licensor shall cooperate with You to protect Your interests in and rights to such Work Product, including, without limitation, by executing any document as requested by You, including applications, powers of attorney, assignments or other instruments which You deem necessary to apply for registration of any patent, copyright or other proprietary right in any and all countries or to convey any right, title or interest therein to any of Your nominees, successors and assigns.

IV. Limited License to Customer Data. Subject to the terms and conditions of these Terms of Use, You grant to Licensor a non-exclusive license to use, copy, store, transmit and display Customer Data to the extent reasonably necessary to provide and maintain the Subscription Service.

V. Confidentiality.

1. “Confidential Information” means all code, inventions, algorithms, know-how, ideas and all other business, technical and financial information of each party which is furnished to the other party in written or tangible form in connection with these Terms of Use. Without limiting the generality of the foregoing, "Confidential Information" shall also include all information given to one party (the "Receiving Party") by the other party (the "Disclosing Party"), or otherwise acquired by the Receiving Party, in connection with these Terms of Use, and all information derived or generated therefrom, including without limitation (i) information regarding any of the products or services of the Disclosing Party or any of its affiliates, (ii) all Preexisting Property of a party, (iii) information regarding costs, productivity or technological advances. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential.

2. Notwithstanding the foregoing, Confidential Information does not include information which is: (a) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (b) independently developed by the receiving party; (c) publicly disclosed through no fault of the receiving party; (d) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (e) approved for release by written agreement with the disclosing party; or (f) disclosed pursuant to
the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the providing party of any such requirement and cooperate with any attempt to procure a protective order or similar treatment.

3. Neither party will use the other party’s Confidential Information except as reasonably required for the performance of these Terms of Use. Each party will hold in confidence the other party’s Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party’s Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party’s obligations hereunder.

4. Upon termination or expiration of these Terms of Use, except as otherwise agreed in writing or otherwise stated in these Terms of Use, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party’s possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party’s possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees or agents.

5. In case a party receives legal process that demands or requires disclosure of the disclosing party’s Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

VI. Indemnification.

1. Licensor will defend, indemnify, and hold You, Your officers, directors, employees and agents harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) arising from any third party claim, action, or allegation of infringement of any United States copyright, patent, trademark, or misappropriation of a trade secret by the Subscription Service or Content (other than that due to Customer Data). In case of such a claim, Licensor may, in its discretion, procure a license that will protect You against such claim without cost to You, replace the Subscription Service with a non-infringing Subscription Service, or if it deems such remedies not practicable, Licensor may terminate the Subscription Service and these Terms of Use without fault, provided that in case of such a termination, You will receive a pro-rata refund of the license fees prepaid for use of the Subscription Service not yet furnished as of the termination date. THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

2. In case of any claim that is subject to indemnification under these Terms of Use, the party that is indemnified (“Indemnitee”) will provide the indemnifying party (“Indemnitor”) reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under these Terms of Use. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and
will tender the defense and settlement of any action or proceeding covered by this Article VIII to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

VII. Disclaimer of Warranties and Limitation of Liability.

1. **YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED TO YOU “AS IS” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. LICENSOR MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. LICENSOR DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SUBSCRIPTION SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY LICENSOR. NO ORAL OR WRITTEN ADVICE PROVIDED BY LICENSOR OR ANY AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.**

2. Internet Delays and Third Parties. Licensor’s Subscription Service may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Licensor is not responsible for any delays, delivery failures, or other damage resulting from such problems. The Subscription Service may include gateways, links or other functionality that allows You and/or Users to access third party services (“Third Party Services”) and/or third party content and materials (“Third Party Materials”). Licensor does not supply and is not responsible for any Third Party Services or Third Party Materials, which may be subject to their own licenses, end-user agreements, privacy and security policies, and/or terms of use.
LICENSOR MAKES NO WARRANTY AS TO THIRD PARTY SERVICES OR THIRD PARTY MATERIALS.

3. Limitation of Liability. In no event shall Licensor’s aggregate liability exceed the amounts actually paid by and/or due from You in the twelve (12) month period immediately preceding the event giving rise to such claim. TO THE MAXIMUM EXTENT PERMITTED BY LAW IN NO EVENT SHALL LICENSOR BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY OR OTHERWISE, EVEN IF LICENSOR HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS OR CERTAIN INTENTIONAL OR NEGLIGENT ACTS, OR VIOLATION OF SPECIFIC STATUTES, OR THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

VIII. General.

1. Applicable Law. These Terms of Use shall be governed and interpreted in accordance with applicable United States federal law.

2. Miscellaneous. If any provision of these Terms of Use is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Licensor and you as a result of these Terms of Use or use of the Subscription Service. The failure of Licensor to enforce any right or provision in these Terms of Use will not constitute a waiver of such right or provision unless acknowledged and agreed to by Licensor in writing.